

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

HEARING DATE: August 19, 2009
HEARING TIME: 11:00a.m.
HEARING PLACE: Buffalo

IN RE

RACHEL L. HAMM

DEBTOR

CHAPTER 13

CASE NO. 09-12229

JUDGE: Michael J. Kaplan

**NOTICE OF MOTION FOR RELIEF FROM THE AUTOMATIC STAY
PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362 (d)
FOR FAILURE TO MAKE POST-PETITION PAYMENTS**

PLEASE TAKE NOTICE that PHH Mortgage Corporation, by and through its attorneys, Shapiro & DiCaro, LLP, will move this Court at the 300 Pearl Street, Suite 350, Buffalo, NY 14202-2501, on August 19, 2009 at 11:00a.m., or as soon thereafter as counsel may be heard, for an Order:

1. Pursuant to Bankruptcy Rule 4001 and 11 U.S.C. §362(d), granting PHH Mortgage Corporation relief from the automatic stay due to Debtor's failure to make post-petition payments; and/or
2. Granting PHH Mortgage Corporation such other and further relief as is just and proper.

Dated: August 3, 2009
Rochester, New York



Anne E. Miller-Hulbert
Shapiro & DiCaro, LLP
Attorneys for PHH Mortgage Corporation
250 Mile Crossing Boulevard
Suite One
Rochester, NY 14624
(585) 247-9000

TO: Debtor
Rachel L. Hamm
372 Woodland Avenue
Tonawanda, NY 14223

Attorney for Debtor
David F. Butterini
2746 Delaware Ave
Kenmore, NY 14217

Trustee
Albert J. Mogavero
Chapter 13 Trustee
The Dunn Building
110 Pearl St 6th Floor
Buffalo, NY 14202

US Trustee
Kathleen Schmidt, Esq.
42 Delaware Ave.
Ste. 100
Buffalo, NY 14202

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PURSUANT TO BANKRUPTCY RULE 4001 AND 11 U.S.C. §362(d)
FOR FAILURE TO MAKE POST-PETITION PAYMENTS**

PHH Mortgage Corporation, by and through its attorneys, Shapiro & DiCaro, LLP, for an Order vacating the automatic stay pursuant to 11 U.S.C. §362(d) due to Debtor's failure to make post-petition payments, and in support thereof, states as follows:

1. Debtor filed a petition for relief under Chapter 13 of the U.S. Bankruptcy Code on or about May 18, 2009.

2. PHH Mortgage Corporation is a secured creditor of the Debtor by virtue of a mortgage executed by Debtor on January 8, 2004 and given to Cendant Mortgage Corporation securing the repayment of the principal sum of \$76,950.00 due under the Bond/Note and granting Cendant Mortgage Corporation a security interest in the Property commonly known as 372 Woodland Drive, Tonawanda, NY 14223 (the "Property"). Copies of the Mortgage and Bond/Note are annexed hereto as Exhibit "A". PHH Mortgage Corporation is formerly known as Cendant Mortgage Corporation.

3. Debtor defaulted under the terms of the Note and Mortgage for failure to make the payments when due on June 1, 2009 in the amount of \$748.33 per month and for each month thereafter to date.

4. The principal balance due on the Bond/Note secured by the Mortgage is \$71,070.77 and the payoff balance on the Mortgage is approximately \$75,484.53.

5. Debtor is delinquent under the mortgage in the total amount of \$2,759.85 consisting of the following:

03 monthly payments at \$748.33 each	= \$	2,244.99
June 1, 2009 - August 1, 2009		
02 late charges at \$7.43 each	= \$	14.86
June 1, 2009 - July 1, 2009		
Bankruptcy Filing Costs	= \$	150.00
Bankruptcy Attorneys' fees	= \$	350.00
TOTAL	= \$	2,759.85

6. By failing to make post-petition mortgage payments, Debtor has failed to provide PHH Mortgage Corporation with adequate protection for its interest in the Property.

7. It is respectfully submitted that good cause exists to vacate the automatic stay of 11 U.S.C. §362 to allow PHH Mortgage Corporation to maintain a foreclosure action on its mortgage.

WHEREFORE, PHH Mortgage Corporation respectfully requests that an Order be granted vacating the automatic stay as to PHH Mortgage Corporation so as to permit the commencement, resumption or maintenance of mortgage foreclosure proceedings with respect to the Property, and for such other and further relief as the Court may deem just and proper.

Dated: August 3, 2009



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